

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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Plaintiff,

NOT FOR PUBLICATION

-against-

**ORDER ADOPTING REPORT  
AND RECOMMENDATION**

L.G. APPAREL, INC. and GOOD CHOICE  
APPAREL, INC.,

09-CV-3240 (KAM)(SMG)

Defendants.

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**MATSUMOTO, United States District Judge:**

Presently before the court is a Report and Recommendation issued by Chief Magistrate Judge Steven M. Gold on February 18, 2011, recommending that the court deny plaintiff's motion for default judgment for failing to establish both defendants' liability under the Fair Labor Standards Act ("FLSA") and plaintiff's damages. (See ECF No. 13, Report and Recommendation at 2, 10.)

Notice of the Report and Recommendation was sent electronically to plaintiff's counsel via the court's electronic filing system on February 18, 2011.<sup>1</sup> As explicitly noted at the

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<sup>1</sup> Because defendants never appeared, they were not electronically served with a copy of the Report and Recommendation and plaintiff did not serve a copy of the Report and Recommendation on defendants. Accordingly, on March 9, 2011, the court attempted to serve a copy of the Report and Recommendation on the defendants at the address in the record via Federal Express, along with an Order providing that defendants were granted until March 25, 2011 to file any objections contained in the Report and Recommendation with the Clerk of the Court. (3/9/11 Order; ECF No. 14, Certificate of Service L.G. Apparel, Inc., dated 3/9/11; ECF No. 15, Certificate of Service on Good Choice Apparel, Inc., dated 3/9/11.) The court's Federal Express envelopes were addressed to each defendant at their respective addresses listed in plaintiff's complaint and in her default motion papers - specifically, to L.G. Apparel Inc. at 254 36th Street Brooklyn, NY 11232 and to Good Choice Apparel, Inc., at 254 36th Street, Brooklyn, NY 11232. (See ECF No. 1, Compl. ¶¶ 6-7; ECF No. 7, Aff. of

end of the Report and Recommendation, written objections to the Report and Recommendation were due within fourteen days of February 18, 2011, and in any event no later than March 7, 2011. (Doc. No. 13 at 10.) The statutory period for filing objections has lapsed, and no objections to Judge Gold's Report and Recommendation have been filed.

In reviewing a Report and Recommendation, the district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). Where no objection to the Report and Recommendation has been filed, the district court "'need only satisfy itself that there is no clear error on the face of the record.'" *Urena v. New York*, 160 F. Supp. 2d 606, 609-10 (S.D.N.Y. 2001) (*quoting Nelson v. Smith*, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985)).

Accordingly, upon a review of Judge Gold's thorough and well-reasoned Report and Recommendation, the record before the court and the relevant case law, and considering that the parties have failed to object to any of Judge Gold's recommendations, the

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Service; ECF No. 8, Request to Enter Default at 5; ECF No. 12, Mem. of Law in Support at ¶¶ 7-8.) However, on March 14, 2011, Federal Express indicated to the Clerk's Office that it was unable to deliver the Report and Recommendation to either defendant. The court verified this information on Federal Express's website (see ECF No. 16), and independently conducted a search for the defendants' addresses, but was unable to find alternate addresses for either defendant. As the defaulting defendants are most certainly not prejudiced by a recommendation of the denial of the motion for default judgment against them and, as the court has been unable to find alternate addresses for defendants, the court considers the instant Report and Recommendation without further delay.

court finds no clear error in Judge Gold's Report and Recommendation and hereby affirms and adopts the Report and Recommendation in its entirety as the opinion of the court. The plaintiff's motion for default judgment is denied.

The plaintiff is directed to file an amended complaint within fourteen (14) days from the date of this Memorandum and Order and to serve the amended complaint on defendants within thirty (30) days from the date of this Memorandum and Order. Plaintiff is notified that the failure to file and serve the amended complaint within the times set forth above will result in the dismissal of this case pursuant to Federal Rule of Civil Procedure 41 for failure to comply with a court order and failure to prosecute, and pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim.

Plaintiff is directed to serve defendants with a copy of this Memorandum and Order and file a declaration of service on ECF by March 16, 2011.

**SO ORDERED.**

Dated: March 15, 2011  
Brooklyn, New York

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Kiyo A. Matsumoto  
United States District Judge